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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,974	11/09/2001	John C.K. Hui	4857-000001/CPF	1546

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EXAMINER

TRUONG, KEVIN THAO

ART UNIT PAPER NUMBER

3731

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,974

Applicant(s)

HUI, JOHN C.K.

Examiner

Kevin T. Truong

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/4/02, 6/30/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 3731

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-29 in the reply filed on 07/09/2004 is acknowledged. The traversal is on the ground(s) that Applicant has not presented any argument as to why it was traversed. Therefore, it is not found persuasive.

The requirement is still deemed proper and is therefore made FINAL.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,589,267. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as a plurality of inflatable devices, source of compressed fluid in

Art Unit: 3731

communication with said inflatable devices; and a fluid distribution assembly would have been obvious in view of the relatively detailed subject matter of the patent claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Zheng et al. (4,753,226).

Zheng et al. teach and external counterpulsation apparatus for treating a patient including a table with bladders for placement on selected extremities of the patient and a pressure generating device for applying a selected force on the extremities of the patient. Zheng et al. teach the apparatus including a plurality of bladders or inflatable devices 9 selectively inflatable by means of a source of compressed fluid from a reservoir and a fluid distribution system. The fluid distribution system including a pump for pumping compressed fluid to the bladders. The distribution system further including fluid inflation valves 8 for each bladder selectively usable and deflation valves 10 selectively usable for deflating the bladders. The patient is placed on a table which includes movable portions for maximizing the effect of the therapy where the table portions are motor driven for placement at a desired angle. A monitoring/computer system is provided for monitoring the pressure and cardiac signals and displaying these on the monitor of the computer.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zheng et al. (4,753,226) in view of Curlless et al. (3,866,604)

Zheng et al. disclose the invention substantially as claimed. Zheng et al. teach and external counterpulsation apparatus for treating a patient including a table with bladders for placement on selected extremities of the patient and a pressure generating device for applying a selected force on the extremities of the patient. Zheng et al. teach the apparatus including a plurality of bladders or inflatable devices 9 selectively inflatable by means of a source of compressed fluid from a reservoir and a fluid distribution system. The fluid distribution system including a pump for pumping compressed fluid to the bladders. The distribution system further including fluid inflation valves 8 for each bladder selectively usable and deflation valves 10 selectively usable for deflating the bladders. The patient is placed on a table which includes movable portions for maximizing the effect of the therapy where the table portions are motor driven for placement at a desired angle. A monitoring/computer system is provided for monitoring the pressure and cardiac signals and displaying these on the monitor of the computer. However, Zheng et al. do not suggest the deflating valves in fluid

communication with the atmosphere and where the valves are kept in an open state upon a power loss condition.

Curless et al. teach an external counter pulsation apparatus including a plurality of bladders connected to valves and a distribution system for selective inflation and deflation of the bladders for treating a patient. Curless et al. teach the apparatus further including a patient table including adjustable portions and a computer 16 for displaying pertinent patient data. Further, Zheng et al. teach the distribution system including deflation valve 63 for deflating the bladders and where the valve 63 is in fluid communication with the atmosphere. These valves are normally open and if at any time during a power failure the manifold valve 61 opens connecting the bladders to the atmosphere and valve 63 opens allowing the user to not be trapped in the bladders (column 8, lines 27-34).

Accordingly, it would have been obvious to a person having ordinary skill in the art of blood circulation therapy at the time of Applicant's invention to construct the valve system of Zheng et al. as the plurality of valves in fluid communication with the atmosphere for venting due to a power failure. Providing such a system would enable the user to quickly exit the apparatus during a power failure, thus causing his extremities no further damage from being overly pressured or confined within the apparatus.

6. Claims 12-16 and 19-24 are rejected under 35 U.S.C. § 103 as being unpatentable over Zheng et al., as modified above by Curless et al., in view of Roensch

(2,230,068).

Zheng et al., as modified above by Curless et al., discloses the invention substantially as claimed. See above for specific structural details. Briefly, Zheng et al., as modified above by Curless et al., teach an apparatus for applying pressure to selected parts of a patient using a plurality of bladders. The patient lies on a table having adjustable portions for treatment with the apparatus. However, Zheng et al., as modified by Curless et al., do not suggest the table further including wheels.

Roensch teaches a treatment apparatus for the treatment of a patient using a bladder for applying pressure to a selected portion of a patient. Roensch teaches the patient being treated by a machine generating a pressure including a cabinet with wheels thereunder. The wheels enabling the movement or positioning of the apparatus.

Accordingly, it would have been obvious to a person having ordinary skill in the art of counterpulsation treatment at the time of Applicant's invention to provide the apparatus of Zheng et al., as modified above by Curless et al., as including wheels thereunder. Providing such wheels would allow the movement of the apparatus. The apparatus could be moved along with the patient to another room or treatment area where further treatment apparatus could be used or simply to move the patient to a room that is closer to the attending physicians or for providing privacy to the patient.

Allowable Subject Matter

7. Claim 18 would allowable if terminal disclaimer is timely filed to overcome the double patenting rejection.

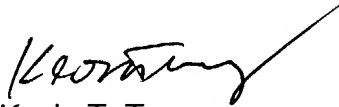
Art Unit: 3731

8. Claims 4, 5, and 8-11 would be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. **Note:** these claims must overcome the double patenting rejection as well.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 703-308-3767. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 703-308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin T. Truong
Primary Examiner
Art Unit 3731

ktt